IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/06/2004

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE N.KANNADASAN

H.C.P.No.238 of 2004

Magalakshmi .. Petitioner

-Vs-

1. The State of Tamilnadu
rep. by the Secretary
Prohibition & Excise Department
Fort St. George, Chennai.

2. The Commissioner of Police
Greater Chennai, Egmore
Chennai-8. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.M.Rajavelu

For Respondents: Mr. Abudukumar Rajaratnam
Additional Public Prosecutor

:O R D E R

(The order of the Court was made by P.D.DINAKARAN, J.)

The petitioner, who is the mother of one Elango @ Elangovan (hereinafter referred to as "the detenu"), who had been incarcerated by the order of detention dated 31.1.2004 passed by the second respondent herein, dubbing him as a Goonda, under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug-Offenders, Forest-Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Act, 1982, seeks a writ of Habeas Corpus to call for the entire records leading to the detention of the detenu by the second respondent vide order No.11/BDFGIS/ 2004, dated 31.1.2004 on the file of the second respondent, to quash the same as illegal and consequently to direct the respondents to produce the body of the detenu from Central Prison, Chennai.

2. The order of detention came to be passed by the second respondent based on a ground case said to have taken place on 8.1.2004 at about 12.00 hours. On that day, the detenu, along with Saravanan @ Kavai Saravanan, Selva @ Selvakumar, Ranga @ Ranganathan, Sekar @ Karuppu Sekar, Palani and others, armed with knife and log in their hands, went to the backside gate of the Kapaleeswarar temple and attacked Ravi and Nagaraj. On hearing the hue and cry of one Karpagam, wife of Ravi, and public came for their rescue. Noticing the rushing of public, the detenu along with the abovesaid persons, picked up soda water bottles and hurled the same against the public and thereby created traffic dislocation in that area. The said Karpagam, lodged a complaint and the same was registered as Crime No.49 of 2004 on the file of the E1 Mylapore Police Station for the offences punishable under Sections 147, 148, 341, 324, 336, 427, 307 and 506(ii) IPC. Thereafter, the detenu was remanded.

3. That apart, there are four adverse cases in Crime Nos.1866/2002, 785/2003, 831/2003 and 840/2003 on the file of E1 Mylapore Police Station for the offence punishable under Sections 147, 148, 341, 324, 32 6, 302, 307, 336, 384 and 506(ii) IPC registered against the detenu.

4. The detaining authority, after taking into consideration the ground case and the adverse cases, being satisfied that the detenu was acting in a manner prejudicial to the maintenance of public order, ordered the detention.

5. The petitioner challenges the impugned order of detention on the only ground that the second respondent has observed in the grounds of detention that there is an imminent possibility of the detenu coming out on bail and non-mentioning of the fact that the detenu had already filed a bail application before the Principal Sessions Judge, Chennai, in Crl.M.P.No.832 of 2004 on 27.1.2004, and the same was pending at the time of passing the order of detention amounts to nonapplication of mind and therefore, the impugned order of detention is liable to be set aside for non application of mind.

6. In C.CHITHAMBARA SELVI v. STATE OF TAMIL NADU REP. BY ITS SECRETARY, PROHIBITION & EXCISE DEPARTMENT, FORT ST.GEORGE, MADRAS-9 AND ANOTHER, 1998 (2) MWN (Cr.) 326, a Division Bench of this Court held that failure to take notice of the pendency of the bail application on the part of the detaining authority while passing the impugned order of detention amounts to non-application of mind, as the detaining authority was of the opinion that the detenu had not filed any bail application.

7. Applying the ratio laid down in C.CHITHAMBARA SELVI v. STATE OF TAMIL NADU REP. BY ITS SECRETARY, PROHIBITION & EXCISE DEPARTMENT, FORT ST.GEORGE, MADRAS-9 AND ANOTHER, 1998 (2) MWN (Cr.) 326, the impugned order of detention is vitiated. The habeas corpus petition is allowed. The detention order dated 31.1.2004 is set aside. The detenu Elango @ Elangovan is directed to be released forthwith, unless and otherwise he is required in connection with any other case.

Index :Yes

Internet:Yes

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To

1. The Secretary
Prohibition & Excise Department
Fort St. George, Chennai.

2. The Commissioner of Police
Greater Chennai, Egmore
Chennai-8.

3. The Public Prosecutor
High Court, Madras.